

Appl. No. 10/734,719
Amdt. dated July 10, 2006
RESPONSE TO RESTRICTION REQUIREMENT

PATENT

The foregoing election is made with traverse. Applicants request that Group I, a polynucleotide that encodes SEQ ID NO:9 and related proteins; and Groups II and III, polynucleotides that encode SEQ ID NOs:12 and 14 and related proteins, be examined together, as the proteins are all derived from *Campylobacter* species, have related structures, and have the same enzymatic activity.

Applicants also assert that, at the very least, claim 1 is a genus claim linking the dependent species claims to related nucleotides that encode related proteins, *i.e.*, α -2,3-sialyltransferases from *Campylobacter*. As such, upon allowance of a linking genus claim, the restriction requirement should be withdrawn with respect to the species claims. MPEP 809.03. Applicants further note that when the requirement for restriction is predicated upon the non-allowability of a generic linking claim, Applicant is entitled to retain in the case claims to the non-elected invention. If the generic linking claim is allowed, the Examiner must then examine non-elected claims to species falling within the genus. MPEP 809.04.

Finally, restriction of an application is discretionary. A restriction requirement is made to avoid placing an undue examination burden on the Examiner and the Office. Where claims can be examined together without undue burden, the Examiner must examine the claims on the merits even though they are directed to independent and distinct inventions. MPEP 803.01.

The MPEP is quite clear that the requirements for restriction of nucleotide sequences can be waived to permit a "reasonable number" of nucleotide sequences, and by extension amino acid sequences, to be claimed in a single application. The US Patent Office has determined that ten sequences constitute a "reasonable number" for examination purposes. MPEP 803.04. Moreover, nucleotide sequences encoding the same protein are not considered to be independent and distinct. MPEP 803.04. As the total number of claimed nucleic acids in Groups I, II, and III is three encoded amino acid sequences, under the current rules of the US Patent and Trademark Office, search of all groups together would not create an undue burden on the Examiner.

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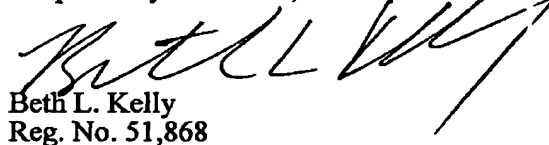
Applicants respectfully submit that examining the claims of Groups I, II, and III together (nucleotides that encode α -2,3-sialyltransferases from *Campylobacter*) would not place an undue burden on the Examiner. Applicants therefore respectfully request that the restriction requirement with respect to Groups I, II, and III be withdrawn.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,


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